

STATEMENT OF CONSIDERATIONS

REQUEST BY GENERAL ELECTRIC POWER SYSTEMS, FOR AN ADVANCE WAIVER OF DOMESTIC AND FOREIGN INVENTION RIGHTS UNDER DOE COOPERATIVE AGREEMENT NO. DE-FC26-03NT41448; W(A)-03-043, CH1164

The Petitioner, General Electric Power Systems (GEPS), was awarded this cooperative agreement for the performance of work entitled, "Enabling and Information Technology to Increase RAM for Advanced Power Plants". The purpose of the cooperative agreement is to develop, validate and accelerate the commercial use of enabling technologies for coal/Integrated Gasification Combined Cycle (IGCC) powerplant condition assessment and condition based maintenance. The purpose of condition assessment is the real-time, automatic extraction of useful information from operating data to guide decisions, which differentiates it from traditional powerplant monitoring. By contrast, condition based maintenance relies upon the use of this derived information to accurately predict capital parts consumption and maintenance outage schedules. The five-year program will develop, validate and accelerate the commercial use of enabling technologies for powerplant condition assessment and condition based maintenance. The waiver is for inventions of GEPS only; any inventions of GEPS' subcontractor Sandia National Laboratory are not covered by this waiver.

The total estimated cost of the cooperative agreement is \$15,384,212 with the DOE share being \$9,230,527 or 60%, while the remaining cost share of 40%, or \$6,153,685, will be provided by GEPS. The period of performance is sixty months from March 1, 2003 to February 28, 2008.

In its response to questions 5 and 6 of the attached waiver petition, GEPS has described its technical competence and commercial position in the field of power generation and monitoring. GEPS states it is an international leader in energy products and services; serving power generation, industrial, marine, oil and gas, and distributed generation markets. GEPS had revenues exceeding \$22 billion in 2002 and employs 35,000 people worldwide. It has provided, in attachment A to the waiver petition, representative samples of patents and publications demonstrating GE's technical competence in power generation. GEPS further states that its F-technology gas turbine has been sold commercially since 1989, and that it has also developed a broad spectrum of technologies to monitor and support the equipment it manufactures and services. Its Global Remote Monitoring and Diagnostics (RM&D) systems enable GE experts to remotely access operational data of power plants, jet engines, railroad locomotives, medical scanners, etc., operating worldwide, and to exercise sophisticated algorithms that can detect abnormal operation conditions. Attachments C, D, E, and F describe in response to question 6,

contain a sampling of documents that support GE's commercial position, as well as provide further evidence of its technical competence. GEPS' response demonstrates its technical competency in the field of power generation and monitoring.

In its response to questions 9 and 10 of the attached waiver petition, GEPS states that DOE's solicitation for this award resulted in multiple competitive awards being made, and that grant of the waiver should not hinder competition in the market place. In addition, GEPS states that grant of the waiver will promote the development and commercial utilization of inventions through direct sales, contracted services, and/or license agreements. Potential licensees are any of GE's customers for power generation equipment, who would apply the know-how taught by patents for use in their operations. Therefore grant of the waiver will have a positive effect on competition and market concentration.

The subject cooperative agreement will be modified to add the Patent Rights--Waiver clause in conformance with 10 CFR 784.12, wherein GEPS has agreed to the provisions of 35 U.S.C §§ 202, 203, and 204. This waiver clause will also include a paragraph entitled U.S. Competitiveness, in which GEPS agrees to substantial U. S. manufacture of subject inventions (attached hereto). Additionally, GEPS agrees not to transfer subject inventions to any other entity unless that other entity agrees to these same requirements. The petitioner has further agreed to modification of the data clause of the subject cooperative agreement (48 C.F.R. 952.227-14) by adding paragraph (k), Alternative VI, concerning contractor licensing of data.

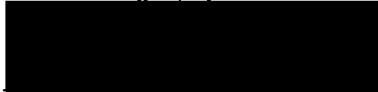
Considering the foregoing, it is believed that granting the waiver will provide the Petitioner with the necessary incentive to invest resources in the commercialization of the results of the agreement in a fashion which will make the agreement's benefits available to the public in the shortest practicable time. In addition, it would appear that grant of the above requested waiver would not result in an adverse effect on competition nor result in excessive market concentration. Therefore, in view of the objectives and considerations set forth in 10 CFR 784, all of which have been considered, it is recommended that the requested waiver, as set forth above, be granted.


Mark P. Dvorscak
Assistant Chief Counsel
Intellectual Property Law Division

Date Jan 5, 2004

Based on the foregoing Statement of Considerations and the representations in the attached waiver petition, it is determined that the United States and the general public will best be served by a waiver of rights of the scope described above, and therefore the waiver is granted. This waiver shall not apply to any modification or extension of this agreement, where through such modification or extension, the purpose, scope, or cost of the agreement is substantially altered

CONCURRENCE:



George Rudins
Deputy Assistant Secretary
Office of Fossil Energy
Coal and Power Systems
FE-20/FORS

Date:

Feb 18, 2004

APPROVAL:



Paul A. Goyles
Assistant General Counsel
for Technology Transfer and
Intellectual Property

Date:

2-23-04

(t) U. S. COMPETITIVENESS The Contractor agrees that any products embodying any waived invention or produced through the use of any waived invention will be manufactured substantially in the United States unless the Cooperative contractor can show to the satisfaction of the DOE that it is not commercially feasible to do so. In the event the DOE agrees to foreign manufacture, there will be a requirement that the Government's support of the technology be recognized in some appropriate manner, e.g., recoupment of the Government's investment, etc. The Cooperative contractor agrees that it will not license, assign or otherwise transfer any waived invention to any entity unless that entity agrees to these same requirements. Should the Cooperative contractor or other such entity receiving rights in the invention undergo a change in ownership amounting to a controlling interest, then the waiver, assignment, license, or other transfer of rights in the waived invention is suspended until approved in writing by the DOE.